

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

LLOYD T. ELDER, SR.,)	
)	
Plaintiff,)	
)	
v.)	No. 2:20-cv-00271-JPH-DLP
)	
JACKSON,)	
)	
Defendant.)	

Order

The defendants have raised the affirmative defense that the plaintiff failed to exhaust his available administrative remedies before filing this lawsuit as required by the Prison Litigation Reform Act ("PLRA") and have filed a motion for summary judgment in support of this defense. In response, the plaintiff has filed a motion for trial by jury and *Pavey* hearing and to recover all discovery. The motion, dkt. [25], is **denied** to the extent that the Court has not yet resolved the motion for summary judgment and therefore cannot yet determine whether a *Pavey* hearing or jury trial is necessary.

The plaintiff also alleges that the defendants have not provided him with requested discovery, but he does not state that he has served discovery requests that the defendants have not responded to or that he has tried to resolve his discovery issues informally as required by Federal Rule of Civil Procedure 37. Once he files proper discovery requests and makes an informal resolution attempt, he may file a motion to compel if he still has not received the discovery he needs.

Finally, to the extent that the motion can be understood in part to be a response to the motion for summary judgment, the Court notes that, while the plaintiff has submitted argument,

he has not supported his argument with admissible evidence. Specifically, he has not filed an affidavit signed under penalties for perjury verifying the facts he claims. In addition, while he has presented documents in support of his claims, he has not produced evidence that the documents are what he says they are as required by Federal Rule of Evidence 901. Rule 901(a) states: "To satisfy the requirement of authentication or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent says it is." This can be done with the affidavit of a witness with knowledge that an item is what it is claimed to be. Fed. R. Evid. 901(b)(1).

Rule 56(e) of the Federal Rules of Civil Procedure provides that if a party fails to properly support a statement of fact, the Court may give the party the opportunity to properly support the fact. Accordingly, the plaintiff shall have **through November 30, 2020**, to authenticate the evidence he has presented.

SO ORDERED.

Date: 10/27/2020



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

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